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ELECTION COMMISSION, INDIA

NOTIFICATIONS

New Delhi, the 18th March 1953

S.R.O. 544.—The following Order of the Election Tribunal is published as an Annexure to S.R.O. 243 appearing in the *Gazette of India, Extraordinary, Part II, Section 3 (No. 30)*, dated the 2nd February, 1953:—

ANNEXURE

BEFORE THE ELECTION TRIBUNAL, BHAGALPUR

ELECTION PETITION No. 112 OF 1952

In the matter of an election petition under section 80 of the Representation of the Peoples Act 1951 (Act XLIII of 1951)

AND

In the matter of election to the Bihar Legislative Assembly from Parbatta Constituency in the District of Monghyr

AND

In the matter of—

Lakhan Lal Mishra, son of Manki Mishra, resident of village and P.O. Kanhaiya Chak, P.S. Parbatta, District Monghyr—*Petitioner.*

Versus

Tribeni Kumar, son of Bindo Kumar, resident of village Dumaria Buzurg, P. S. Parbatta, District Monghyr and others—*Respondents.*

FOR THE PETITIONER:

Sri Balbhadra Prasad Sinha, Advocate and Sri Hirdai Narain, pleader.

FOR RESPONDENTS:

Sri Udai Narain, Advocate and Sri Parmeshwari Prasad Varma, pleader.

PRESENT:

Sri K. Sahai, Barrister-at-Law—*Chairman.*

Sri Umakanta Prasad Sinha,

Sri Rajeshwari Prasad, Advocate—*Members of the Election Tribunal.*

This election petition has been filed by Sri Lakhan Lal Mishra calling in question the election of Sri Tribeni Kumar, respondent No. 1, from the Parbatta Constituency to the Legislative Assembly of the State of Bihar. At the instance of the respondent No. 1 and without any objection on behalf of the petitioner the first three out of the issues framed in the case have been taken up for decision first. Those issues are:—

(1) Is the election petition maintainable?

- (2) Is the election petition barred by Limitation?
- (3) Has there been any subsequent interpolation in the election petition or the list of alleged corrupt or illegal practice as alleged? If so, is the election petition liable to be dismissed on this ground or on the alleged ground that there were no signatures and dates on the petition or the list on the date on which they were filed before the Election Commission?

The facts which, as admitted by both the parties, are relevant for the decision of the aforesaid issues are as follows:—The polling of votes in connection with the election in question took place from the 4th of January to the 22nd of January, 1952. The respondent No. 1 secured the majority of the total number of votes polled in this constituency and he was accordingly declared to be elected and the declaration with regard to his election, as contemplated under section 67 of the Representation of the Peoples Act, 1951 was published in the issue of the Bihar Gazette dated the 18th February, 1952. The notice that return of election expenses had been lodged with the Returning Officer was published on 26th February 1952 and this election petition was filed on 8th April 1952, that is to say, within 14 days from the date of the publication of the notice as required under rule 119(a) of the rules framed under the Representation of the Peoples Act. There is a verification at the foot of the petition and there is also another verification at the foot of the list of particulars filed along with the petition, but on the date of the presentation of the petition there was no signature of the petitioner at the foot of either the petition or the list of the particulars of corrupt practices. This omission on the part of the petitioner was brought to his notice by the Secretary of the Election Commission, India, in his letter, dated the 22nd April, 1952 and thereafter, the petitioner put his signatures at the foot of both the petition and the list of the particulars of corrupt practices on 1st May 1952 and this he evidently did with the permission of the Election Commission.

FINDINGS

Issues Nos. 1 and 3.—These are connected issues and they both are, therefore, dealt with together. Sub-sections (1) and (2) of section 83 of the Representation of the Peoples Act, 1951, lay down that the election petition as well as the list shall be signed and verified in the manner as provided in the Code of Civil Procedure and section 85 of the Act provides that the Election Commission shall dismiss the petition if the provisions of section 81, section 83 or section 117 are not complied with. Notwithstanding anything contained in section 85 the Tribunal also has been expressly vested with powers under section 90(4) of the Act to dismiss an election petition which does not comply with the provisions of the aforesaid three sections of the Act.

The learned advocate for the respondent No. 1 contends that the provisions of section 83 of the Act have not been complied with for the reason that the petition and the list were unsigned on the date of their presentation before the Commission and that the verifications at the foot of both the petition and the list were not in proper form. It has also been contended that the provisions of section 85 are mandatory and that the Election Commission was bound to dismiss the election petition on account of the aforesaid defects. The further contention of the learned advocate on behalf of the respondent No. 1 is that though the word "may" has been used in section 90(4) of the Act, it is imperative for this Tribunal to dismiss the election petition in order to give effect to the mandatory provisions of section 85 of the Act for the dismissal of an election petition which has been illegally entertained by the Commission.

The most important point for consideration, therefore, is whether the provisions of section 85 of the Act are mandatory or directory. The use of the word "shall" does not necessarily make a provision mandatory. I.L.R. 12 Allahabad, 510 (F.B.) expressly lays down that a distinction has to be drawn between cases in which a Court or an official omits to do something which a statute enacts shall be done, and cases in which a Court or an official does something which a statute enacts shall not be done. It has further been held in that case that the omission may not amount to more than an irregularity in procedure in the former case and that the doing of the prohibited thing will be *ultra vires* and illegal in the latter case. In the case reported in 7B and C6 at page 11 also, it has been held that the use of negative words would give a statute imperative effect and that the use of affirmative words may not. No negative word has been used in section 85 of the Act so that it could be construed to be imperative in nature. Sub-sections (1) and (2) of section 83 of the Act correspond to rules 14 and 15 of Or. VI of the Code of Civil Procedure. In those rules, the word "shall" has been used just as it has been used in sub-sections (1) and (2) of section 83 of the Act. It is a well settled principle of law that rules 14 and 15 of Or. VI of the Code of Civil Procedure are not mandatory and that the non-compliance with the provisions of those rules would amount to a mere irregularity. The only difference that is pointed out is

that there is no provision in the Code of Civil Procedure corresponding to section 85 of the Act and that the word "shall" in section 85 of the Act cannot, therefore, be interpreted in the same manner as the word "shall" in rules 14 and 15 of Or. VI of the Code of Civil Procedure has all along been judicially interpreted. It seems to us that the reason why section 85 of the Act has been enacted is that an election petition is required to be filed before the Election Commission which cannot be deemed to have an implied authority to dismiss the petition which does not comply with the requirements of law. It cannot, to our mind, be contended for a moment that for want of a provision in the Code of Civil Procedure similar to that in section 85 of the Act, a Court has no authority to dismiss a plaint when the provisions of rules 14 and 15 of Or. VI of the Code of Civil Procedure are not complied with. This being so, we do not think that the enactment of section 85 in the Act can alter the construction to be put upon the word "shall" in sub-sections (1) and (2) of section 83 and can make it imperative though, if those sub-sections had stood by themselves, they would not have been imperative.

It would not also be out of place to mention that the provision for signing the petition and the list as also the provision for verifying them have been made for the purpose of ensuring that the petitioner cannot subsequently turn round and say that the allegations in the petition and the list were not made to his knowledge and they were not, consequently, binding on him. As there are verifications with signatures, though not in proper form, at the foot of both the petition and the list in question in this case, the petitioner cannot, to our mind, be heard to say that the allegations made therein were not made to his knowledge. Hence the purpose of the enactment of the provisions of sub-sections (1) and (2) of section 83 of the Act has been fully achieved.

Had the provision as laid down in section 85 of the Act been mandatory in nature, the Election Commission would have had to dismiss all petitions which did not comply with the provisions of sections 81, 83 or 117 of the Act. In that case, there would have been no scope for section 86 of the Act and an Election Tribunal could not possibly have been appointed. This being so, the fact that the Tribunal has been vested with powers under section 90(4) of the Act to dismiss an election petition which does not comply with the provisions of section 83 and the other two aforesaid sections in the Act notwithstanding anything contained in section 85, shows that the Election Commission have power in suitable cases to admit election petition even though there has been no strict compliance with the provisions of section 83 of the Act. It may also be added here that the Election Commission was, in our view, perfectly right in not dismissing the election petition under section 85 of the Act for the mere reason that it did not fully comply with the provisions of sub-sections (1) and (2) of section 83 of the Act when the Commission evidently interpreted the word "shall" in section 85 of the Act in the same manner in which the word "shall" in the corresponding provisions in rules 14 and 15 of Or. VI of the Code of Civil Procedure has all along been judicially interpreted.

It is clear from above that the provisions of section 85 of the Act are merely directory and not mandatory and that the Election Commission did not, therefore, act wrongly or illegally in admitting the election petition though it did not strictly comply with the provisions of sub-sections (1) and (2) of section 83 of the Act. The word "may" in section 90(4) of the Act cannot also be thus held to be mandatory and it cannot, therefore, be imperative for this Tribunal to dismiss the election petition for the mere reason that it does not strictly comply with the provisions of section 83 of the Act.

We, therefore, for the reasons set forth above, are of the opinion that the Election Commission had every right to admit this election petition in spite of the fact that it did not strictly comply with the provisions of sub-sections (1) and (2) of the Act and that there are no sufficient grounds for this Tribunal to dismiss this election petition on any such ground. It may also be added here that no question of any subsequent interpolation in the election petition could possibly arise in this case when the petitioner evidently put his signatures at the foot of both the petition and the list on 1st May 1952, with the permission of the Election Commission. Issue No. 1 is accordingly answered in the affirmative and issue No. 3 in the negative.

Issue No. 2.—The election petition has admittedly been filed within 14 days from the date of the publication of the notice of the return of election expenses on 26th February 1952 and no question of limitation does arise in this case. This issue has not also been pressed and is accordingly answered in the negative.

[No. 19/112/52-Elec.III.]

(Sd.) K. SAHAI, *Chairman.*
(Sd.) U. K. P. SINHA, *Member.*
(Sd.) R. PRASAD, *Member.*

BHAGALPUR;

The 24th December, 1952

New Delhi, the 19th March 1953

S.R.O. 545.—Whereas the election of Shri Rameshwar Yadav, as a member of the Legislative Assembly of the State of Bihar from the Makhdumpur Constituency of that Assembly has been called in question by a joint Election Petition (Election Petition No. 322 of 1952 before the Election Commission) duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Ramayan Sharan Singh, s/o Babu Jangbahadur Singh, Village Ner, P.S. Makhdumpur, District Gaya (Bihar) and Shri Awadh Bihari Singh, s/o late B. Ramlal Singh, Village Laraua, P.S. Makhdumpur, District Gaya (Bihar);

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

IN THE COURT OF THE CHAIRMAN, ELECTION TRIBUNAL, HAZARIBAGH

PRESENT:

Shree S. B. Sengupta—*Chairman.*

Shree Gobind Saran—*Member.*

Shree Nirmal Krishna Ghose—*Member.*

(In the matter of Election to the Bihar Legislative Assembly from Makhdumpur Constituency, District Gaya, State of Bihar.)

1. Ramayan Sharan Singh,
2. Awadh Bihari Singh—*Petitioners.*

Versus

1. Rameshwar Yadav,
2. Shanti Devi,
3. Sri Ram Chandra Sharma,
4. Kirti Narain Singh,
5. Gulab Chand Lal,
6. Bajrangi Prasad Sinha,
7. Ram Barat Gope,
8. Maharaj Kumar Fateh Singh,
9. Captain Maharaj Gopal Saran Narain Singh—*Respondents.*

This is an election petition filed by two voters of Makhdumpur Constituency (who did not stand as candidates for the election), for a declaration that the election of respondent No. 1, Shree Rameshwar Yadav is void. There are mainly two grounds alleged in the election petition for holding the election of respondent No. 1 void. The first ground is that the return of the election expenses submitted by the returned candidate (i.e. respondent No. 1) "discloses incurring of expenses in feeding and paying travelling allowances to proposers and seconders which is against the spirit of law" and amounts to "major corrupt practice". The second ground is that the nomination papers of respondents No. 8 and 9 (who are son and father) were illegally and improperly rejected by the Returning Officer, as a result of which the election was materially affected. The election petition is contested by respondent No. 1 only, who has opposed the election petition on various grounds.

The following issues were framed in the case:—

1. Is the petition bad for misjoinder of parties?
2. Are the petitioners entitled to maintain the application?
3. Does the petition contravene the provision of sections 82 and 83 of the R.P. Act?
4. Were the respondents No. 8 and 9 electors in the Gaya town and qualified to be chosen to fill a seat in the Bihar Legislative Assembly from Makhdumpur Constituency? If so, whether the rejection of the nomination papers of the said respondents No. 8 and 9 was illegal and contrary to the express provisions of the Representation of the People Act, 1951?

5. Whether the result of the election of respondent No. 1 has been materially affected by the improper rejection of the nomination papers of the respondents No. 8 and 9? If so, whether the election of respondent No. 1 is fit to be set aside?
6. Whether the return of election filed on 15th March 1952 is in accordance with law? If not, is the election fit to be set aside?
7. Whether the incurring of expenses in feeding and paying travelling expenses as alleged and disclosed in the return of expenses amounts to "Treating" and is this corrupt practice in law? Is the election void on that ground?
8. Was the election fair and free in the Constituency in question and whether any corrupt practice was practised? Can the election be set aside on the ground of corrupt practices, as alleged in the petition?
9. Is the petition entertainable without a properly signed and verified list of corrupt practices and other irregularities alleged to have committed by respondent No. 1?
10. Is the petition bad for multifariousness? Do the rules contemplate a petition by more than one petitioners joining therein? If not, is the petition liable to be dismissed?
11. Did respondents No. 8 and 9 take steps for getting their names entered in any electoral roll? Did they get the inclusion of their names published anywhere, or in the *Bihar Gazette* or in the notice boards of Gaya district?
12. To what relief, if any, are the petitioners entitled?

Issues No. 1, 9 and 10 and part of issue No. 3 were heard by us and these issues were decided by us in favour of the petitioners by our order, dated 10th January 1953 in the ordersheet. The part of issue No. 3 which relates to contravention of the provision of section 82 of the Act for joinder of respondents No. 8 and 9 was not heard at that time as this part is inter-connected with issue No. 4. This part of issue No. 3 and the other issues were all taken up and heard together on 23rd February 1953.

Of these issues, issues No. 6, 7 and 8 were not pressed at the time of hearing.

The only point pressed by the petitioners relates to the rejection of the nomination papers of respondents No. 8 and 9 by the Returning Officer and this point is covered by issues No. 4 and 5. We therefore take up these issues together.

The facts leading to the rejection of the nomination papers of respondents No. 8 and 9 are as follows:—

The last day of filing nomination papers was 24th November 1951. It is admitted that upto that date the names of respondents No. 8 and 9 were not included in the electoral roll of Makhdumpur Constituency. But nonetheless these two respondents filed their nomination papers on 24th November 1951, which was fixed, along with the nomination papers of other candidates, for scrutiny on 26th November 1951. On 26th November 1951, i.e., the date of the scrutiny, objection was taken before the Returning Officer to the effect that the names of respondents No. 8 and 9 did not find place in the electoral roll. But it was represented on behalf of these two candidates (respondents No. 8 and 9) that they had applied to the Election Commission for inclusion of their names in the electoral roll. So the Returning Officer ordered that the nomination papers of these two candidates would be scrutinised on 28th November 1951 on which date these two candidates must file evidence of inclusion of their names in the electoral roll. On 28th November 1951 no evidence showing inclusion of their names in the electoral roll was produced before the Returning Officer. But there was a telegram sent by the Election Commission to the Sub-divisional Officer, Gaya on 26th November 1951 at 11-10 P.M. The text of the telegram was as follows:—

"Commission has directed to-day inclusion in Gaya town Assembly Electoral Roll names of Gopal Saran Narain Singh and Fateh Singh with serial numbers ec. 372, ec. 374 (.). Formal orders follow."

After considering this telegram the Returning Officer concluded that respondents No. 8 and 9 were not electors on 24th November 1951, which was the last date fixed under section 30(a) of the Act for making nomination. Consequently the Returning Officer held that the candidates having not been electors for any Assembly Constituency of the State of Bihar on 24th November 1951, the last date fixed for filing of nominations, the candidates (respondents No. 8 and 9) are not qualified to fill a seat in the Legislative Assembly from Makhdumpur Constituency and he accordingly rejected their nomination papers.

From the evidence on the record it appears that both respondents No. 8 and 9 sent telegrams from Gaya to the Election Commission, New Delhi on 8th November 1951 stating that their names had been inadvertently omitted from the electoral roll of Gaya Parliamentary and Assembly Constituency and praying that their names be included in the electoral roll. On 14th November 1951 regular petitions were filed to that effect before the Election Commission, New Delhi and the necessary fees were deposited. But the Election Commission passed orders on 26th November 1951 directing that the electoral roll be amended by the inclusion of the names of respondents No. 8 and 9. These orders, dated 26th November 1951 were communicated by a telegram on the same date (quoted above) and also by post thereafter.

Under section 2(e), "elector" in relation to a Constituency, means a person whose name is for the time being entered in the electoral roll of that Constituency.

Under section 5(c) of the Act a person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of State unless he is an elector for any Assembly Constituency in that State.

Under section 32 of the Act any person may be nominated as a candidate for election to fill a seat in a Constituency if he is qualified to be chosen to fill that seat under the provisions of the Constitution and this Act.

It is therefore clear that if a person's name is not entered in the electoral roll of a Constituency, he is not entitled to stand as a candidate for election to fill a seat in that Constituency. The last days fixed for filing nomination papers in Makhdumpur Constituency was 24th November 1951 and the names of respondents No. 8 and 9 did not find place in the electoral roll of the Constituency upto that date. They were therefore not electors and not entitled to be nominated as candidates for election to fill a seat in that Constituency and they had no right to file any nomination papers. It is true that by the order of the Election Commission it was directed that the electoral roll of Makhdumpur Constituency be amended by the inclusion of their names. But this order was passed on 26th November 1951, i.e. two days after the expiry of the date fixed for filing nomination papers. It is contended on behalf of the petitioners that this order must be deemed to have retrospective effect and it shall be deemed that the names of respondents No. 8 and 9 were included in the electoral roll prior to 24th November 1951. In support of this contention our attention is drawn to Rule 20(3) of the Representation of the People Rules, 1950. Rule 20(3) runs thus:—

"When any list is republished under sub-rule (1) or a direction is issued under sub-rule (2), the electoral roll to which such list or direction relates shall be deemed to have been revised accordingly."

It is contended on behalf of the petitioners that the term "shall be deemed to have been revised accordingly" means that this revision will have retrospective effect. We are unable to accept this contention. If it was the intention of the Legislature that the revision of the electoral roll by the order for inclusion of certain names after the publication of the rolls is to have retrospective effect, such intention would have been expressed clearly. We do not find any indication, either explicit or by necessary implication, that the revision contemplated in Rule 20(3) of the Representation of the People Rule 1950 (quoted above) is to have any retrospective effect.

The telegram sent on 26th November 1951 by the Election Commission to the Sub-divisional Officer, Gaya for inclusion of the names of respondents No. 8 and 9 in the electoral roll (quoted above), also clearly shows that the direction given by the Commission was to take effect from "to-day" (26th November 1951).

The order sent by post by the Election Commission [Exts. 4 to 4(c)] also runs as follows:—

"Now, THEREFORE, the Election Commission hereby directs that the electoral roll be amended by the inclusion therein of"

The order is dated 26th November 1951. The order therefore means that it is to come into force with effect from 26th November 1951.

We therefore hold that on 24th November 1951 both respondents No. 8 and 9 were not electors, as their names did not find place in the electoral roll of Makhdumpur Constituency up to that date. They were therefore not entitled to file nomination papers on 24th November 1951, which was the last date of filing nomination. By virtue of the order passed by the Election Commission on 26th November 1951, respondents No. 8 and 9 cannot be deemed to be electors either on 24th November 1951 or on any date prior to 24th November 1951; though we should note in this connection that upto now their names had not been entered in the electoral roll of Makhdumpur Constituency (Ext. A). As the respondents No. 8

and 9 were not electors and not entitled to file nomination papers on 24th November 1951, which was the last date of filing nomination, the learned Returning Officer was perfectly justified in rejecting their nomination papers on that ground. We therefore hold that the nomination papers of respondents No. 8 and 9 were rightly rejected by the Returning Officer.

The rejection of the nomination papers of respondents No. 8 and 9 being the only ground pressed by the petitioners during the trial, for declaring the election of respondent No. 1 void and the rejection being found by us to be quite justified and valid, we hold that the election petition must be dismissed. It is therefore not necessary for us to enter into and decide the remaining issues.

We therefore

ORDER

that the election petition be dismissed with costs of Rs. 200, including pleader's fee, payable by the petitioners to the contesting respondent No. 1.

(Sd.) S. B. SENGUPTA, *Chairman*.

(Sd.) N. K. GHOSE, *Member*.

(Sd.) GOVIND SARAN, *Member*.

The 10th March, 1953.

[No. 19/322/52-Elec.III.]

P. S. SUBRAMANIAN,

Officer on Special Duty.

New Delhi, the 19th March 1953

S.R.O. 546.—WHEREAS the election of Maharaja Anand Chand, resident of Ward No. 5, Chhota Bazar, Nagar Bilaspur, Bilaspur State, as a member of the House of the People from the Bilaspur Parliamentary Constituency has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Daulat Ram of Panjayaton, Pargana Bahadurpur, District and State Bilaspur;

AND WHEREAS by Notification No. 19/2/52-Elec.III, dated the 27th March, 1952, the Election Commission appointed Shri S.S. Dulat, I.C.S., District and Sessions Judge, Delhi to be the Chairman of the Election Tribunal for the trial of the said petition and further appointed Bilaspur as the place where the trial of the petition shall be held;

AND WHEREAS the said Shri S. S. Dulat has relinquished his membership of the said Tribunal;

NOW, THEREFORE, in exercise of the powers conferred by sub-section (4) of section 86 of the said Act, the Election Commission hereby appoints Shri V. B. Sarwate, a retired District Judge of Madhya Pradesh, as the Chairman of the Election Tribunal for the trial of the said petition.

[No. 19/2/52-Elec.III.]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy.

